

ELLIS:LAWHORNE

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July 16, 2004

VIA ELECTRONIC MAIL AND HAND-DELIVERY

The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended,
Docket No. 2004-42-C, Our File No. 803-10208

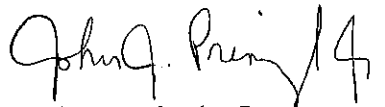
Dear Mr. Duke:

Enclosed are the original and ten (10) copies of the **Joint Motion to Withdraw Petition for Arbitration** for filing in the above-referenced docket.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it with the bearer of these documents. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: John J. Heitmann, Esquire
all parties of record

Enclosures

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**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2004-42-C**

In the Matter of)
)
Joint Petition for Arbitration of)
)
NEWSOUTH COMMUNICATIONS CORP.,)
NUVOX COMMUNICATIONS, INC.)
KMC TELECOM V, INC., KMC TELECOM)
III LLC, and XSPEDIUS COMMUNICATIONS,)
LLC on Behalf of its Operating)
Subsidiaries XSPEDIUS MANAGEMENT CO.)
SWITCHED SERVICES, LLC, XSPEDIUS)
MANAGEMENT CO. OF CHARLESTON, LLC,)
XSPEDIUS MANAGEMENT CO. OF)
COLUMBIA, LLC, XSPEDIUS)
MANAGEMENT CO. OF GREENVILLE,)
LLC, and XSPEDIUS MANAGEMENT CO.)
OF SPARTANBURG, LLC)
)
Of an Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as)
Amended)

**JOINT MOTION TO WITHDRAW
PETITION FOR ARBITRATION**

NewSouth Communications Corp. ("NewSouth"); NuVox Communications, Inc. ("NuVox"); KMC Telecom V, Inc. ("KMC V") and KMC Telecom III LLC ("KMC III") (collectively, "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC ("Xspedius Switched"), Xspedius Management Co. of Charleston, LLC ("Xspedius Charleston"), Xspedius Management Co. of Columbia, LLC ("Xspedius Columbia", Xspedius Management Co. of Greenville, LLC

("Xspedius Greenville") and Xspedius Management Co. of Spartanburg, LLC ("Xspedius Spartanburg") (collectively, "Xspedius") (collectively, the "Joint Petitioners" or "CLECs"), by their attorneys and pursuant to S.C. Code § 58-3-225(E) hereby move for an Order of the Public Service Commission of South Carolina ("Commission") granting Joint Petitioners leave to withdraw their Petition for Arbitration without prejudice to the refiling of same. BellSouth Telecommunications, Inc. ("BellSouth") joins in and supports this Motion. In support, the Parties would show the Commission the following:

1. On February 11, 2004, Joint Petitioners filed their Petition for Arbitration with BellSouth.

2. The Commission assigned the matter Docket No. 2004-42-C.

3. On June 22, 2004, Joint Petitioners filed their Direct Testimony in the Docket.

4. Because the Joint Petitioners have already filed direct testimony in this Docket, S.C. Code § 58-3-225(E) requires Joint Petitioners to obtain an Order of the Commission allowing them to withdraw their Petition.

5. Joint Petitioners seek to withdraw their Petition in order to allow the parties to incorporate the negotiation of those issues precipitated by *USTA II*¹, as well as to continue to negotiate previously identified issues outstanding between the Joint Petitioners and BellSouth. The Joint Petitioners and BellSouth have agreed that they will continue to operate under their current Commission-approved interconnection agreements until such time as they move into a new agreement (either via negotiated agreement or via arbitration pursuant to a subsequent petition for arbitration of a new interconnection agreement). The Parties further agree that any

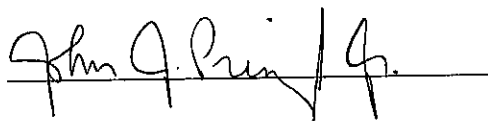
¹ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

subsequent petition for arbitration will be filed within 135 to 160 days of entry of a Commission Order granting this Motion. Additionally, the Parties agree that any new issues added to a subsequent petition for arbitration will be limited to issues that result from the Parties' negotiations relating to *USTA II* and its progeny.

6. The Parties submit that allowing the Petitioners to withdraw their Petition without prejudice to the refiling of same serves the public interest. Particularly, no party will be prejudiced by withdrawal of the Petition, because no party will waive or lose any procedural or substantial right as a result of withdrawal.

WHEREFORE, the Parties respectfully request that the Commission issue an Order granting Joint Petitioners leave to withdraw their Petition for Arbitration without prejudice to the refilling of same, and grant any other relief as the Commission may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Pringle, Jr.", written over a horizontal line.

John J. Pringle, Jr.
ELLIS, LAWHORNE & SIMS, P.A.
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Counsel for the Joint Petitioners

A handwritten signature in black ink, appearing to read "Patrick Turner signed with permission", written over a horizontal line.

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Columbia SC 29202-0752
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Fax 803/254-1731
patrick.turner@bellsouth.com

Counsel for BellSouth Telecommunications, Inc.

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2004-42-C**

In the Matter of

**Joint Petition for Arbitration of
NewSouth Communications, Corp.,
NuVox Communications, Inc.,
KMC Telecom V, Inc.,
KMC Telecom III LLC, and
Xspedius [Affiliates] of an
Interconnection Agreement with
BellSouth Telecommunications, Inc.
Pursuant to Section 252(b) of the
Communications Act of 1934,
as Amended**

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Joint Motion to Withdraw Petition for Arbitration** via first-class and electronic mail service addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
PO Box 752
Columbia SC 29202

David Butler, Esquire
**South Carolina
Public Service Commission**
PO Drawer 11649
Columbia, SC 29211


Carol Roof

July 16, 2004

Columbia, South Carolina

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